

37. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

38. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

39. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

40. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

41. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996

Email: bernie.kopischke@state.mn.us

To Contractor:

IBM Corporation
James Schroeder
WSCA National Program Manager
IBM Global Government Systems
4263 Commercial St. SE, Suite 100
Salem OR 97302
Fax: 503.399.3793 (TL 284)
Email: jschroed@us.ibm.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Consistent nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

46. Audits

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
 1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

49. Ownership

Prior to the issuance of a purchase order, the Contractor will specify Materials to be delivered to the Purchasing Entity and will identify them as being "Type I Materials," "Type II Materials," "Type III", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

A. Ownership of Documents/Copyright for Type III Materials. Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State, and described in the Contract as a Type III Material, shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

B. Rights, Title and Interest. Along with ownership of the materials, any and all copyrights in the copyrightable material will be assigned to the State. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where so agreed, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, or patents.

C. Definition of Material Types

Type I Materials are those, created during the Service performance period, in which the Purchasing Entity will have all right, title, and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The Purchasing Entity grants Contractor 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the Purchasing Entity. Contractor grants the Purchasing Entity an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Purchasing Entity's Enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which you will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging for ordering by the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

57. E-Rate Program

The Contractor's E-Rate identification number is SPIN #143005607

The Universal Service Administrative Company (USAC) maintains an Eligible Services List on its web site that categorizes services as (a) eligible for discounts, (b) not eligible for discounts, or (c) conditionally eligible for discounts (i.e., depending on details of how a service or component is utilized). The current listing of eligible services and products can be found at <http://www.sl.universalservice.org/reference/eligible.asp> and is current as of 10/13/2003. The SLD has indicated that there will be another update before the end of 2003.

To the extent IBM's participation in the E-rate program is consistent with its corporate strategy and direction, the Contractor shall continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM WSCA/NASPO NATIONAL Pgm. Mgr.

Date: AUGUST 23, 2004

By: _____

Title: _____

Date: _____

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke

Title: Acquisition Management Specialist

Date: 8/24/04

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Willard

Date: 8/24/04

EXHIBIT A - ADDITIONAL WARRANTIES

A. Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

B. Warranty for IBM Programs

IBM warrants that each warranted IBM Program, when used in the Specified Operating Environment, will conform to its Specifications. The warranty period for a Program expires when its Program Service are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability. If a Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it.

C. Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

D. Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

E. Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

F. Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and Programs that it does not warrant.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT B - COMPLAINT RESOLUTION

A. Hardware and Software Support 1-800-IBM-SERV

1. The IBM support organization's goal is to ensure customer satisfaction by:
 - a. Responding to your calls within targeted guidelines.
 - b. Providing ongoing communication regarding your problem status through problem resolution.
 - c. Taking ownership of your call for support.
 - d. Providing a defined escalation process when management assistance is needed.
 - e. Maintaining our commitment to continuous improvement of our service processes.
2. IBM support gives you the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products. You have the option of voice (1-800-IBM-SERV) or electronic access (<http://www.ibm.com/support>) to a team of technical specialists. Support is available 24 hours per day, 7 days per week, 365 days per year.
3. For all eligible products, IBM can help you with:
 - a. General Support:
 - Usage and installation questions
 - Product compatibility and interoperability questions
 - Interpretation of product documentation
 - Diagnostic information reviews to help isolate the cause of a problem
 - Configuration samples
 - IBM and multivendor database searches
 - Planning information for software fixes
 - Defect Support
 - b. Electronic Support:
 - Submit problems and get answers electronically
 - View screens remotely
 - Submit documents electronically
 - View open problems that have been submitted
 - Search IBM's question and answer database
4. Before contacting support, you will need to gather information about the problem and have it on hand when discussing the situation with a specialist.
 - a. define the problem
 - b. gather background information
 - c. gather relevant diagnostic information
 - d. determine the business impact – assign a severity level
 - Severity 1 - Critical business impact, this indicates you are unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution.
 - Severity 2 - Significant business impact, this indicates the problem is usable but is severely limited.
 - Severity 3 - Some business impact, this indicates the program is usable with less significant features (not critical to operations) unavailable.
 - Severity 4 - Minimal business impact, this indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented.
5. When you call support to report an IBM software problem or update/gain status on a problem, your request will be routed to a technical specialist. For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options. IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal country business hours, and within two hours during off-shift hours for critical problems. Our initial response may result in resolution of your request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request.

6. Whether you contact IBM by telephone or electronically, once logged, a unique problem management record (PMR) or Incident/Support case is created. Your PMR, Incident or Support Case is routed to a resolution team for handling. You may be transferred directly to the resolution team or your issue will be placed in a queue for call back. In either case, the next person you speak with will be a specialist in the appropriate resolution team.
7. At the resolution team level your call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one support team in resolving a particular software problem. This is easily handled, as our support teams are all networked together and work as one to resolve whatever problems or issues arise.
8. If at any point in our service process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a Duty Manager or by calling your local customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to ensure your expectations are met and that your request is being handled appropriately. Further escalation procedures for complaint resolution are described in the following "IBM Complaint Management Process for Customer Complaints and Escalation Management" section of this RFP response.

B. IBM Billing and Ordering Support

1. Electronic Billing:
 - a. IBM Invoices OnLine allows you to view your invoices using an Internet browser. Once you register with us providing an e-mail address and your IBM customer numbers, you'll receive a login ID and password. Whenever new invoices are issued, you will receive an e-mail notification alerting you to this fact. You can then login to Invoices OnLine and view them. You can also search the invoice database by customer number, date range, invoice type or payment status to view previously delivered invoices.
 - b. Electronic Data Interchange (EDI) will transmit invoices electronically to you and can feed right into your inventory management and / or accounts payable systems. IBM charges no fee for electronic invoicing. If you are interested in this method contact us by calling the toll free number on the top of your invoice or by sending a note to address in the upper left corner of your invoice and we will have someone contact you regarding this option.
 - c. Eprocurement - IBM can help leverage your investment by integrating your eProcurement system with an IBM electronic catalog. We provide the catalog with the products and prices you are entitled to through your current agreement/contract with IBM. Your end users can shop for the IBM products they need and place their order electronically.
2. In the event there is a problem with your order or invoice, IBM telephone support for ordering or billing inquiries is available from 8:00 am to 8:00 pm EST, Monday through Friday, by calling 1-877-426-6006, option 2. IBM Customers with ordering inquiries also have the ability to submit an online request for order related inquiry.
3. there are two different methods available within Invoices On-Line to electronically communicate with us if you have a question, comment, or problem with an invoice. The invoice inquiry function available from Invoices On-Line automatically creates a prepopulated inquiry form that includes the customer number, invoice number, your name, account name, e-mail address and telephone number is prepopulated on the form, all you need to do is select from a list the reason for your inquiry or invoice dispute and submit the form to us. We will review your request and respond to you as quickly as possible. You can also send an e-mail to us by clicking on the "Contact Us" button.
4. Once received by the IBM customer service team (telephone or electronic), our goal is to respond to your inquiry within one business day. Most inquiries are quickly resolved. If at any point in the inquiry process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a CSO (customer service operations) Manager. CSO Managers are assigned

geographically throughout the United States. Escalations to a CSO manager will receive prompt attention and management focus. They will work with our order and billing staff to ensure your expectations are met and that your request is being handled appropriately.

5. Further escalation procedures for complaint resolution are described in the following section.

C. IBM Complaint Management Process for Customer Complaints and Escalation Management

1. The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when "business as usual" or advertised or entitled support processes have been exercised but have failed to resolve the customer's problem in a timely manner. A customer complaint is defined as:
 - a. A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise.
 - b. A failure from a previous customer-IBM interaction to deliver on a commitment/expectation.
 - c. When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress.
 - d. Customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.
2. A critical situation is defined as:
 - a. A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when:
 - The problem is causing or is about to cause severe impact to the customer's business, or
 - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
 - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship.
3. An alert is defined as:
 - a. A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.
4. A proactive situation is defined as:
 - a. A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.
5. The Complaint Management Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, headquarters, etc. for streamlined escalation management. The key Roles and Responsibilities of the Complaint Management Tool are:
 - a. Feedback Collector (FC), the person with initial contact with the customer.
 - Captures key customer information, such as contact information and problem description.
 - Categorizes the primary problem/issue so that the complaint can be routed to the most appropriate Resolution Owner.
 - b. Response Coordinator (RC), identifies the most appropriate RO or RTL or RA to engage in a situation when a request for assistance is made:
 - Ensures right RO/RTL from their organization is assigned.
 - Monitors progress against responsiveness indicators such as 7-day Close or Action plan, 48 hour RO acknowledgement, 48 hour RTL assignment, etc.
 - Keeps functional management informed.

- c. Resolution Owner (RO), acts as the customer advocate by serving as the primary IBM interface with the customer.
 - Contacts the customer within 48 hours to acknowledge ownership of the situation and determine the customer's conditions of satisfaction.
 - Develops and documents a customer-agreed to action plan within 7 working days of open.
 - Qualifies situations for the escalation process.
 - Engages a Resolution Team Leader and Resolution Assistants if assistance is needed to resolve the customer concerns.
 - Confirms with customer that the issue is resolved to their satisfaction and that the customer agrees to closure.
 - d. Resolution Team Leader (RTL), teams with the Resolution Owner to resolve the customer's issue:
 - Develops and manages the IBM internal resolution action plan.
 - Provides technical/organizational knowledge to help engage the right resources, including RAs.
 - Works in partnership with the Resolution Owner.
 - e. Resolution Assistant (RA), assists the RO or the RTL:
 - Performs action plan tasks.
 - Provides assistance in resolving the customer request or preventing recurrence.
 - f. Senior Executive Reviewer (SER) is the senior executive escalation process which provides:
 - Issues already escalated through worldwide customer satisfaction project offices whose resolution was not acceptable to the General Manager of the Resolution Owner's (RO) organization.
 - Situations affecting multiple customers which identify pervasive and complex issues involving multiple Divisions where the problems have not been resolved.
6. How the CM tool works to resolve customer complaints:
- a. A customer complaint is received by any customer contact person (the Feedback Collector).
 - b. The Feedback Collector records the customer's issue and contact information and categorizes the customer's primary problem. The FC requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue.
 - c. The RO contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader to be assigned within 48 hours.
 - d. The RO and the RTL document and execute the agreed-to action plan to resolve the situation.
 - e. When the customer agrees the situation is resolved, the RO closes the situation.

EXHIBIT C - VALUE ADDED SERVICES

Contact the Contractor for more details on these services and their related costs. All professional services **MUST** be related to the purchase of equipment from the Contract.

- A. **Cabling Infrastructure**
Cabling Infrastructure includes but is not limited to:
 - 1. Cat5 or greater cable
 - 2. Coax
 - 3. Fiber (SM and MM)
 - 4. All Cable trays and support materials
 - 5. Termination equipment
 - 6. IDF/MDF support (racks, termination equipment, tags, patch panels, etc.)
- B. **Network Electronics** - IBM supports all major Network Electronics vendors, but specializes in Cisco technologies.
- C. **Wireless Infrastructure**
During a typical IBM Wireless LAN engagement, IBM will conduct Site Surveys to determine installation requirements. IBM will procure, configure and perform a system test of the wireless equipment. IBM will then perform the physical installation of the wireless LAN bridge equipment at the designated site, as well as configure and test the Wireless LAN bridge equipment. Wireless LAN is defined as technology conforming to 802.11X standards.
- D. **High Bandwidth Infrastructure**
IBM provides High Bandwidth Infrastructure through a number of methods. IBM is defining this category to be "connectivity between distinct physical locations with speeds at OC3 or greater." This type of bandwidth capability is important to clients seeking an infrastructure to unify voice, video, and data over a single transport mechanism.
- E. **Data Center Services**
IBM provides a range of services for the build, move, upgrade, and/or security of a client data center. These services combine IBM labor (see rate table) with various specific service offerings or OEM technology to deliver the most comprehensive Data Center Services in the Industry.
- F. **Servers & Storage**
Servers and storage are key infrastructure components for an enterprise. Depending on the size and the client's legacy systems integration requirements, IBM offers server and storage solutions with the largest scalability in the industry. Whether in a school site or part of a data center server consolidation program, IBM can design a server/storage system, install, configure, train staff, and support that system for WSCA clients.
- G. **Operating Systems Engineering, Design, Deployment**
IBM provides a range of services for Operating Systems. From the Engineering of the build process, golden images for deployment, application testing, hardware / configuration testing to the configuration of the various services that are required to provide enterprise services from the platform.
- H. **Infrastructure Software**
IBM provides a complete suite of infrastructure software for our client's needs. IBM defines the following categories of software as Infrastructure Software and can provide IBM or third party products for each category
- I. **Web Portal**
As one of three types of information (data) that requires information transport, IBM offers a Web Portal solution through IBM's Web Connection Framework (WCF). Web Portal is the entry point for a client's information that is provided in a Browser based format to all constituencies in the enterprise. IBM takes Web capabilities to their logical application as a solution for client needs by connecting various parties to

conduct the "business" of the enterprise. IBM calls this type of activity 'e-business' and is widely credited with authoring that phrase.

J. Technical Services

Technical Services typically include the following:

1. Design/Engineering
 - a. Solution Design
 - b. Technical Engineering
 - c. Product Certified Specialists
 - d. Business and Technical services
 - e. Solution Installation
 - f. Hardware
 - g. Software
2. System Configuration
 - a. Configuration
 - b. Testing
3. Maintenance
 - a. Break/Fix Support
 - b. Software Maintenance
 - c. Network Maintenance
4. Training - Staff Training in Support of Infrastructure Solution
5. Support
 - a. Help Desk / Support Center – implement and operate support for end users.
 - b. Problem Management – reduce the number and impact of problems.
 - c. Change Management – provide smooth changes into system operations.
 - d. Knowledge Management – capture problem resolution and 'how to' procedures for reuse.
 - e. Event and Availability Management – monitoring and proactive network management, including components such as access management, configuration management, software distribution, etc.

K. Network Management Services such as Help Desk

Network Management can be handled either by installing tools on-site and run by the client technology staff (after appropriate training) or can be delivered as a remote service. Operation by client staff is covered in the procurement of Hardware, Software, and Training, therefore this section addresses remote network management specifically where the client procures a service and not the tools themselves.

IBM Remote Network Management Services is an out-tasking service for monitoring, managing and maintaining your I/T infrastructure seven days a week, twenty-four hours a day (7x24). This service is enabled by connecting the WSCA participant's network to the IBM Network Operations Center.

IBM provides network management services for active assets that reside on the network and support Simple Network Management Protocol (SNMP). These assets may be routers, switches, intelligent hubs, servers, etc.

IBM provides monthly and real-time on-line reports, as well as a secure Internet portal to view your network status in "real-time". This includes topology maps that graphically depict the managed assets within the network, thereby enabling efficient response to problems. Each month IBM reviews your reports, interprets your data and recommends improvements as required as part of the Engineering Analysis service.

Services include: Problem Management, Performance Management, Configuration Management for routers and switches, Change Management for routers and switches, and Internet Security Service.

L. Asset Management

IBM's Asset Management solutions can be provided on-site at the client location or as remotely delivered services. Our solution encompasses a closed loop set of processes to ensure that IT assets are managed from 'cradle to grave,' including procurement, tracking/operations, disposal, and associate financials. A central repository of assets is at the hub of the closed loop processes, with updates being provided by the processes that perform activity on or change the location of the asset.

M. Security

IBM delivers security solutions that help customers to assess their needs, protect data and assets, detect threats and intrusions, and recover from incidents. We even offer services to manage your security needs end-to-end. Together with our Alliance partners, IBM delivers best-of-breed IT solutions according to the industry-specific needs of any organization.

N. Training

IBM IT(Information Technology) Education Services is the largest IT training organization in the world. We deliver approximately 5,000 classes per month. IT instructional services include:

1. Solutions for innovative on-line learning technologies.
2. Resources for on-line instructional development and packaging.
3. Synchronous Tools/Techniques for On-Line Learning.
4. Classroom technologies and infrastructures.
5. Digital classroom of the future
6. Lab technologies and infrastructures.
7. Application technologies.

EXHIBIT D - CONFIDENTIALITY AGREEMENT

IBM Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:

- 1) in writing;
- 2) by delivery of items;
- 3) by initiation of access to Information, such as may be in a data base; or
- 4) by oral or visual presentation.

2. Obligations

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

The Recipient agrees to:

- 1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- 2) use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- 3) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
- 4) any other party with the Discloser's prior written consent.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order. [We cannot promise to enter into written agreements with State employees, who are subject to collective bargaining agreements that restrict terms and conditions of employment.]

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

- 1) already in its possession without obligation of confidentiality;
- 2) developed independently;
- 3) obtained from a source other than the Discloser without obligation of confidentiality;
- 4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- 5) disclosed by the Discloser to another without obligation of confidentiality.
- 6) required to be disclosed by applicable law, or judicial or administrative order issued by a court or administrative agency of competent jurisdiction.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

- 1) providing to others products or services which may be competitive with products or services of the Discloser;
- 2) providing products or services to others who compete with the Discloser; or
- 3) assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of the State of New York to govern, interpret, and enforce all of our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

By _____
(Authorized Signature)

Name (type of print): _____

Date: _____

Identification number: _____

Address: _____

Agreed to:

IBM/Rational Software

By _____
(Authorized Signature)

Name (type or print): _____

Date: _____

Agreement number: _____

Address: _____

After signing, please return a copy of this Agreement to the "IBM address" shown above.